



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,712	01/15/2004	Keith Lucas	41963-8002.US01	6561
22918	7590	03/13/2008		
PERKINS COIE LLP P.O. BOX 2168 MENLO PARK, CA 94026			EXAMINER BAROT, BHARAT	
			ART UNIT 2155	PAPER NUMBER
			MAIL DATE 03/13/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/758,712	Applicant(s) LUCAS ET AL.	
	Examiner Bharat N. Barot	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) 44-86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO AMENDMENT

ELECTION BY ORIGINAL PRESENTATION

1. Newly submitted claims 44-86 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 1-43 are drawn to a communication system and method for an interactive device using a framework, classified in a network area class 709 subclass 217-219 and 236-237; and Claims 44-86 are drawn to a system and method for physical fitness, classified in a business method area class 705 subclass 1-3.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 44-86 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. Claims 1-43 remain for further examination.

The old rejection maintained

3. Applicant's responses filed on December 05, 2007 have been fully considered. The rejection is respectfully maintained as set forth in the last Office Action mailed on October 05, 2007.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 31-41 are rejected under 35 U.S.C. 101 because the claimed inventions of the claims 31-41 are directed to non-statutory subject matter. Claim 31 recited "A data structure comprising: an exercise object..., a workout object..., and a program object..." which is non-statutory for at least the reason that is as not being tangibly embodied in a storage medium and in manner so as to be executable by a computer/processor. Further, a collection of objects, per se, is not an actual data structure, instead being non-functional descriptive material. Thus the rejection under 101 as being an abstract idea and not being in a manner so as to be executable.

Other dependent claims, which are not specifically cited above are also rejected because of the deficiencies of their respective parent claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for

patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Aggarwal et al (U.S. Patent No. 6,917,969). Aggarwal's patent meets all the limitations for claims 1-43 recited in the claimed invention.

8. As to claim 1, Aggarwal et al teach a communication system for an interactive device (see abstract; and figure 1) comprising: a data conduit operative for transferring XML formatted data; an Internet framework, coupled to a first end of the data conduit, operative for sending and receiving XML formatted data; and an interactive device framework of the interactive device, coupled to a second end of the data conduit, operative for sending and receiving XML formatted data (figure 1; column 1 lines 21-45; column 2 line 8 to column 3 line 8; column 4 line 18-61; and column 6 lines 18-39).

9. As to claims 2-3, Aggarwal et al teach that the Internet framework further comprises applications that utilize the XML formatted data; and the interactive device framework further comprises applications that utilize the XML formatted data (figure 1; column 1 lines 21-45; column 2 line 8 to column 3 line 8; column 4 line 18-61; and column 6 lines 18-39).

Art Unit: 2155

10. As to claim 4, Aggarwal et al teach that the interactive device is a handheld device (column 1 lines 35-45).

11. As to claims 5-11, the XML data format can be used for sending, receiving, and controlling different types of object for data communication in the network, which is known and inherent in the art at the time the invention was made.

12. As to claims 12-14, transferring the XML formatted data via a serial bus (LAN), a firewire (VPN), and a wireless network (WLAN) is known and inherent in the art at the time the invention was made.

13. As to claims 15-30, they are also rejected for the same reasons set forth to rejecting claims 1-14 above, since claims 15-30 are merely a method of operations an for the apparatus defined in the method claims 1-14.

14. As to claims 31-43, claims 31-43 do not teach or define any new limitations than above claims 1-30; therefore, they are rejected for the similar reasons.

Response to Arguments

15. Applicant's responses filed on December 05, 2007 have been fully considered.

The examiner has attempted to answer (response) to the remarks (arguments) in the body of the Office action.

Art Unit: 2155

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bharat Barot** whose Telephone Number is **(571) 272-3979**. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number **(571) 273-8300**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Saleh Najjar**, can be reached at **(571) 272-4006**.

/Bharat N Barot/

Primary Examiner, Art Unit 2155

February 21, 2008

Application/Control Number: 10/758,712
Art Unit: 2155

Page 7